

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 172

October 29, 1957

## DEDUCTIONS: ADDITIONAL AMOUNTS PAID INTO A PROFIT-SHARING TRUST

### Syllabus:

Additional contributions to an employee's profit-sharing trust may be taken as deductions for the income year in which they are made, if the formula for determining the amounts to be contributed is amended to provide for the additional contributions.

Taxpayer had established an exempt employee's profit-sharing trust to which it was required to contribute 10% of its taxable income. In 1955 a section of the Internal Revenue Code was repealed retroactively. As a result taxpayer's income for 1954 was increased by \$10,000. As required by the trust indenture \$1,000 was paid to the trust on December 15, 1955.

Advice is requested whether the additional \$1,000 paid to the trust is deductible for the 1954 or 1955 income year.

The only provision for permitting payments to a profit-sharing trust to be attributed to a prior year was the sixty-day grace period under the 1954 Bank and Corporation Tax Law Section 24121 p-1(E) (now Section 24607). In the 1955 revision Section 24607 extended the grace period of such payments for deduction purposes to the time for filing a return for the income year. However, Section 24607 is not applicable to income years prior to January 1, 1955. Consequently, the payment not having been made within the grace period of Section 24121 p-1(E) is not deductible for the 1954 income year.

Payments made in the current year are deductible only if they are required to be made for such year. The decision in McClintock-Trunkey Co, 217 F2d 329, held that the formula for determining contributions may be amended to provide for additional contributions. Therefore, if the formula for determining contributions is amended to require payment of the additional contribution, it is deductible for the 1955 income year. Such deduction is subject to the limitations of Bank and Corporation Tax Law Section 23603.